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The Senate of
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Opinion Committee

August 10, 1995

Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P.O. Box 12548, Capital Station
Austin, Texas 78711-2548

FILE # ML-35322-95
I.D. # 35322

Dear General Morales:

Senate Bill 964, Acts of the 74th Legislature, Regular Session, 1995 (the Driver Training and traffic Safety Accountability Act, effective September 1, 1995) amends various sections of four laws relating to driver education and driving safety training courses.

Two questions have arisen regarding the construction of the laws (as so amended) relating to these courses. The first question is whether the Central Education Agency ("Agency") may supply to public schools in the State of Texas whose driver education courses do not meet the standards of and have not been approved by the Agency or the Department of Public Safety ("Department") the certificates to be used to certify completion of an approved driver education course. The second question is whether a driving safety course that has not been approved by the Agency under existing law (but has been "conditionally" or "temporarily" approved) no longer needs to obtain the Agency's approval.

I was the sponsor of the bill in the Senate, and I know what I believe to be the answer to both questions. Representative Kevin Bailey sponsored it in the House and agrees with that construction. However, the Commissioner of Education ("Commissioner") apparently disagrees with that construction, and your opinion on both questions therefore is respectfully requested.

Driver education and driving safety training courses are conducted by public schools, some colleges, and by proprietary schools. Their purpose is to reduce the deaths, injuries, and property damage caused annually as a result of traffic crashes by improving driver knowledge and skills. See, Article 4413(29c), Section 2, Vernon's Texas Civil Statutes. Driver education courses teach students how to drive, including the laws applicable to operating a motor vehicle; driving safety courses teach licensed drivers how to be better drivers. Successful completion of the former is required for persons under age 18 to obtain a driver's license (Section 25, Senate Bill 964). The first of the two questions on which your opinion is requested relates only to driver education courses.

Driver Education Certificates. Section 21.102, Education Code,



provides that the Agency "shall develop a program of organized instruction in driver education and traffic safety for public school students." It further provides that the Commissioner "shall establish standards for the certification of professional and paraprofessional personnel who conduct the programs in the public schools." The Education Code does not address issuing certificates of successful completion to students who have participated in such a program.

Section 25, Senate Bill 964, amended Subsection (a), Section 7, Article 6687b, Vernon's Texas Civil Statutes, to provide that one of the requirements that a person under the age of 18 must meet in order to obtain a driver's license is to submit "a driver education certificate provided for by Section 9A ... indicating that the person has completed and passed a driver education course approved by" the Department or the Agency. Previously, the requirement was only that a person "had completed and passed a driver training course" approved by the Agency, although in fact certificates were issued to students upon successful completion. The amendment to Subsection 7(a) makes it clear that only a certificate issued under Section 9A will satisfy the requirement.

Section 9, Senate Bill 964, added Section 9A to the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) to provide for the certificates that are "to be used for certifying completion of an approved driver education course ... " The Agency is to supply the serially numbered certificates to "licensed and exempt driver education schools ... " The Commissioner apparently believes (see enclosure) that, since public schools are governed by the Education Code, they not only are exempt from the requirement of obtaining a license to operate a driver education school but also are entitled to receive and issue Section 9A certificates of completion without the necessity of having an approved driver education course.

Article 4413(29c) (among other things) regulates driver education schools and courses. Subsection (c) of Section 7 of that Act (as amended by Section 7, Senate Bill 964) exempts five categories of schools and courses from the requirement of obtaining a license to operate a driver education school:

- (1) a vocational driver training school operated to train or prepare a person for a field of endeavor in a business, trade, technical, or industrial occupation;
- (2) a school or training program that offers only instruction of purely avocational or recreational subjects as determined by the Commissioner;
- (3) a course of instruction or study sponsored by an employer

for the training of its own employees, and no tuition is charged to a student;

(4) a course of instruction sponsored by a recognized trade, business, or professional organization for the instruction of the members of the organization with a closed membership; and

(5) a school that is otherwise regulated and approved under any other state law.

However, Subsection (c), Section 7, Article 4413(29c), as amended by Section 7, Senate Bill 964, provides that the courses and schools listed above are exempt from the provisions of the Driver and Traffic Safety Education Act "except Section 9A of the Act," said exception relating to issuing certificates of successful completion in order that a person under age 18 may obtain a driver's license.

Apparently, the Commissioner believes that the five categories of schools and courses listed above not only are exempt from obtaining a license from the Agency in order to offer a driver education course, but also may issue certificates of completion (that may be used in obtaining a driver's license) without the necessity of following the curriculum and using textbooks that have been approved by the Commissioner (under Subsection (b), Section 6, Senate Bill 964) for such a course. If so, the "except Section 9A" language quoted above would have no evident purpose.

Accordingly, your opinion is requested as to whether: (1) the categories of schools and courses listed above not only may teach driver education courses without obtaining a license but also may issue certificates of completion without meeting the minimum requirements for such a course; or (2) may teach such a course without a license, but must meet the standards and monitoring requirements of the Act (as is true for all other schools teaching such courses) if they issue the Section 9A certificate upon completion.

Driving Safety Course Approval. As stated, previously, driving safety courses are intended to make better drivers out of people who already have a driver's license. They primarily are conducted by proprietary schools. Section 4, Senate Bill 964, amended several subdivisions of Section 3, Article 4413(29c), and added seven new definitions, one of which is contained in Subdivision (16), which defines an "approved driving safety course" as a driving safety course approved by the State Board of Education ("Board").

Although Senate Bill 964 added the new definition, Article 4413 (29c) required Agency approval for such courses even prior to the

amendment. However, Section 15, Senate Bill 964, sets forth new criteria for approving driving safety courses, schools, and course providers and establishes the fees to accompany such applications. Under Paragraph (G), Subdivision (1), Subsection (b), Section 13, of Article 4413(29c) as amended by Section 15, Senate Bill 964, the fee to accompany an application for approval of a "driving safety course that has not been evaluated" by the Board is fixed at \$9,000.

To make clear that no course which already had been approved by the Agency had to pay this fee and obtain reapproval, Subsection (b), Section 32, Senate Bill 964, provides as follows:

Notwithstanding Paragraph (G), Subdivision (1), Subsection (b), Section 13, Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes), as amended by this Act, a driving safety course approved before the effective date of this Act by the Central Education Agency is not required to be reapproved after the effective date of this Act, and no fee is owed in relation to approval of the course unless the fee became due before the effective date of the Act.

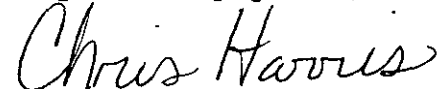
Apparently, the Commissioner is interpreting this subsection to mean that driving safety courses that have not been approved, but rather have been granted "temporary or conditional approval" by the Agency prior to the effective date of Senate Bill 964 do not have to complete the approval process. Accordingly, your opinion is requested as to whether: (1) the effect of this provision is simply to not require reapproval of courses that already have received final approval from the Agency: or (2) the effect is to grant approval to courses that have only received "temporary or conditional approval" from the Agency.

Your opinion on both of the questions set forth in this letter is requested. Since, under the construction given by the Commissioner to the provisions of Senate Bill 964, students may be receiving certificates of completion from driving training courses that have not been approved (and using those certificates to obtain dismissal of traffic tickets), and public schools will be able to obtain driver education completion certificates at the end of this year without insuring that the course that results in receipt of the certificate meets minimum standards, it is respectfully requested that -- if possible -- you issue your opinion prior to December 1,

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1995. That is the date when, under the Agency's current timelines, the new driver education certificates of completion will be available for distribution.

Respectfully yours,

A handwritten signature in cursive script that reads "Chris Harris".

Chris Harris

Enclosure: Letter to Senator
Chris Harris, dated July 20, 1995

cc:

Honorable Mike Moses
Commissioner of Education
1701 North Congress Avenue
Austin, Texas 78701-1494

Honorable Kevin Bailey
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78769



TEXAS EDUCATION AGENCY

1701 NORTH CONGRESS AVENUE • AUSTIN, TEXAS 78701-1494 • (512) 463-9734

July 20, 1985

The Honorable Chris Harris
State Senator
P.O. Box 12068
Austin, Texas 78711

Dear Senator Harris:

Thank you for your recent letter addressing the questions that have been raised regarding the implementation of Senate Bill 964 - the Driver Training and Traffic Safety Accountability Act. The staff of the Texas Education Agency has examined this legislation to determine its impact on the public school system and the role of the Agency in administering the programs authorized under this Act. It is my understanding that a number of questions have been raised with regard to our interpretation of this Act and how it will be implemented.

During the legislative session, I expressed my concern that an increase in agency functions should be accompanied by the resources necessary to carry out those functions. Additional personnel and funds would be required to administer the driver education program as you requested. We were not authorized the amount of resources necessary for this function. In addition, House Bill 1 requires the Agency to reduce the size of its operations to a fixed staffing level. As with all of our programs, we are currently looking at ways to comply with this mandate and reduce the size of our agency through methods such as outsourcing functions to the private sector or other governmental entities.

It is not the intention of the Agency to abdicate its responsibility in the oversight of programs under our jurisdiction, however, there is some doubt as to whether our jurisdiction over driver training programs in the public schools falls within our ability to monitor programs on site. Since Senate Bill 964 does not bring public school driver training programs under the Driver Training Act we must continue to treat them as we would any other program provided in the public schools. Senate Bill 964 allows the agency to oversee driver training schools which are defined as "an enterprise that maintains a place of business or solicits business in this state, that is operated by an individual, association or corporation..." Clearly, this definition does not include the public school system. Furthermore, Senate Bill 1 places specific limitations on what the Agency may or may not do with respect to overseeing the public school system and, to the extent possible, we must allow school districts maximum flexibility without interference from the state.

Senate Bill 964 contains provisions by which new course providers can apply for approval and pay appropriate fees in order to become a provider for an approved driver training course. However, the bill also states that "a driving safety course approved before the effective date of this Act by the Central Education Agency is not required to be reapproved after the effective date of this Act, and no fee is owed in relation to the approval of the course unless the fee became due before the effective date of this Act". This language has been interpreted by our legal division to mean that courses receiving even temporary or conditional approval to operate in the past cannot be required to reapply for course approval. We are not attempting to ignore the intent of the legislation as you have described in your letter, rather we are simply ensuring that we are on firm legal ground should this matter result in litigation.

The possibility that inferior courses may slip through the cracks due to our interpretation of this law is of great concern. We have concluded that the Agency would still have a right to sanction any individual course provider when there is reasonable cause to believe that a course provider has violated legal requirements by offering an inferior course. As you have stated, good driver training programs save lives and we wish to ensure that quality instruction is provided in both the public and private sector courses.

With respect to the minimum fee for a driver training course of \$25, it is my understanding that this issue has been resolved. The Agency will develop rules which specify that the \$25 price is the minimum price and that promotional offers or giveaways cannot reduce that price.

It is my hope that we can continue to work together to reach consensus in areas of disagreement. The staff of the Agency is ready to continue working with you and your staff to resolve these issues. Should you require any additional information, please contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mike Moses", with a checkmark at the end.

Mike Moses
Commissioner of Education